

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

DOUGIE LESTER,
individually and on behalf of all others
similarly situated,

Civ. Action No. 5:17-cv-00740
Honorable Judge Irene C. Berger

Plaintiff,

v.

**PAY CAR MINING, INC.,
BLUESTONE INDUSTRIES, INC.,
BLUESTONE COAL CORP.,
KEYSTONE SERVICE INDUSTRIES, INC.
and MECHEL BLUESTONE, INC.,**

Defendants.

MOTION FOR LEAVE TO AMEND COMPLAINT

NOW COMES the Plaintiff, pursuant to Fed. R. Civ. P. 15, and MOVES this Honorable Court to permit the amendment of the Complaint as set forth herein. In support of the Motion, Plaintiff states as follows:

1. The Plaintiff seeks leave to amend the Complaint by adding an additional plaintiff, and a second count arising under the WARN Act, because discovery and investigation in this case have revealed that Defendant Bluestone Industries, Inc. ordered a second plant closing or mass layoff in October 2012, in addition to the plant closing at the Pay Car Mine as pleaded in the original Complaint. This second plant closing or mass layoff occurred at the Frontier Mine, where Bluestone Industries also employed miners through the subsidiaries Pay Car Mining, Inc. and Frontier Coal Company, Inc., among others.
2. On or about October 18, 2012, Bluestone Industries ordered the layoff of at least fifty full-time employees at the Frontier Mine.

3. On or about October 18, 2012, the Defendants ordered the layoff of at least 125 of their full-time employees at the Pay Car Mine, and transferred several crews of those miners---including the Plaintiff Dougie Lester---to begin working the next day at the Frontier Mine.

4. The miners who transferred from Pay Car to Frontier then worked for two weeks before Bluestone Industries ordered the permanent closure of the Frontier Mine permanently as of November 1, 2012, and terminated all of the workers there without any advance notice, including Plaintiff Robert C. Porter.

5. The mass layoff or plant closing at the Frontier Mine arose out of the same conduct, transaction, or occurrence set out in the original pleading insofar as both layoffs were directed and carried out by Bluestone Industries, and insofar as Bluestone Industries transferred miners on the payroll of Pay Car Mining, Inc. between those two mines in order to carry out work during the course of the plant closings in October 2012.

6. On April 13, 2018, the Defendants produced the complete payroll records of Pay Car Mining, Inc. for 2012. These records confirmed the testimonial evidence that Defendants transferred miners back and forth between Frontier and Pay Car throughout 2012 while keeping those miners on the payroll of Pay Car Mining, Inc.

7. The Defendant Bluestone Industries, Inc. acted as a single employer through its subsidiaries in executing these two layoffs, much the same as this Court has found that Defendant Bluestone Industries, Inc. acted as a single employer in ordering and carrying out the similar reductions-in-force at issue in the WARN Act cases involving the 2013 layoff at the Coal Mountain Surface Mine and the 2011-2012 layoff at the Burke Mountain Mine Complex. *See* Mem. Op. and Order at 7-9 (ECF 43), *David Jordan v. Dynamic Energy, Inc., et al.*, Case 5:16-cv-04413 (Mar. 29, 2018) (Berger, J.); *cf.* Mem. Op. and Order at 8 (ECF 25), *Frank G.*

Treadway, et al. v. Bluestone Coal Corp., et al., Case 5:16-cv-12149 at 8 (Mar. 5, 2018) (Berger, J.).

8. As set forth more fully in the Amended Complaint and the Memorandum in Support of this Motion, the Defendant Bluestone Industries, Inc. exercised *de facto* control over the contemporaneous layoff of more than 50 miners at the separate Frontier and Pay Car Mines, which shared and transferred workers from one site to the other during the period in which the plant closings occurred at each of those mines in and around October 2012.

9. The Plaintiff seeks to amend the Complaint based on information revealed in discovery in order to correct errors and omissions in the original naming of the parties and pleading of the facts in this putative class action.

10. The additional Plaintiff---Robert C. Porter---was employed during the applicable period by Bluestone Industries through its subsidiaries Pay Car Mining and Frontier Coal at both the Pay Car and Frontier Mines. That is, Bluestone transferred Mr. Porter between the two mines to work for several months at a time.

11. The Amended Complaint is filed herewith as Exhibit 1.

12. Plaintiff conferred repeatedly with opposing counsel prior to filing this Motion to Amend, but was unable to reach an agreement as to the proposed Amended Complaint

WHEREFORE, as set forth more fully in the Memorandum in Support of this Motion, and for any other reasons appearing to the Court, Plaintiff respectfully requests that the Court grant leave to add Robert Porter as Plaintiff, and to file the Amended Complaint included here as Exhibit 1.

Plaintiff,
DOUGIE LESTER,
By counsel:

/s/ Samuel B. Petsonk

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CERTIFICATE OF SERVICE

I, Samuel B. Petsonk, counsel for the Plaintiffs, do hereby certify that on the 23d day of April, 2018, I electronically filed *Motion to Amend Complaint* via the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

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/s/ Samuel B. Petsonk
Samuel B. Petsonk (WVSB # 12418)